

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ONEBEACON AMERICA INSURANCE
COMPANY,
Plaintiff,

CIVIL ACTION
NO: 04-11753-JLT

vs.

BLUE WATER ENTERPRISES, INC.
Defendant.

PLAINTIFF'S REQUEST FOR A HEARING

Now comes the plaintiff, OneBeacon America Insurance Company, in the above-entitled action, by and through its undersigned attorneys, Clinton & Muzyka, P.C., and respectfully requests a hearing before the Honorable Joseph Tauro. As grounds in support of this request, the plaintiff submits the following for the Court's consideration.

1. On October 28, 2004, the Court issued an Order requiring the parties' respective surveyors to select an Umpire, for the purpose of determining the nature and extent of the damages sustained by the defendant's vessel, by or before November 5, 2004. The parties' surveyors selected James Simonitsch to serve as Umpire, which was reported to this Honorable Court on November 10, 2004.
2. Based upon the availability of the parties' surveyors, the Umpire scheduled an inspection of the defendant's vessel for November 23, 2004. The parties' surveyors were to be present at the inspection in order to ensure that the Umpire addressed all of their concerns.

3. Defendant's vessel was inspected by the Umpire on November 23, 2004. Although the plaintiff's surveyor was present (David Wiggin), the defendant's surveyor (Robert Scanlon) failed to appear at the inspection.
4. On December 3, 2004, the Umpire issued his findings, which were filed with the Court on December 10, 2004 as required by the aforementioned Order.
5. Shortly after the Umpire's findings were issued, the defendant advised that Mr. Scanlon, who failed to appear at the joint inspection, had several concerns regarding the Umpire's findings. The defendant further advised that Mr. Scanlon was in the process of reducing his concerns to writing and that they would be submitted to the Umpire for resolution.
6. Over two (2) months have elapsed and Mr. Scanlon has not submitted his concerns to the Umpire for resolution. Because of Mr. Scanlon's failure in this regard, the Umpire has been unable to properly submit his findings to local shipyards for repair estimates, which is the next step in this process according to the terms and conditions of the controlling Hull insurance policy.
7. The defendant has instituted a state court action (Plymouth Superior Court, Civil Action No: 04-187) against the plaintiff alleging unfair and deceptive business practices under Chapter 93A. On October 1, 2004, the Superior Court stayed that action for 90-days so that the nature and extent of the damages sustained to the defendant's vessel could be determined by the Umpire. At the joint request of the parties, the Superior Court extended the stay until March 4, 2005.
8. The defendant is requesting a hearing for the purpose of discussing the future handling of this time sensitive matter. It is the plaintiff's position that a schedule be established to ensure that all issues concerning the nature and extent of the damages sustained to the defendant's vessel are resolved before March 4, 2005. The plaintiff wishes to resolve this matter without having to request a further extension of the stay.

WHEREFORE, the plaintiff, OneBeacon America Insurance Company, prays that this Honorable Court schedule a hearing on this time sensitive matter at its earliest possible convenience.

By its attorneys,

CLINTON & MUZYKA, P.C.

"/s/Kenneth M. Chiarello"

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